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09/157,998	09/22/1998	RONALD LESSER		3406

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EXAMINER

BLECK, CAROLYN M

ART UNIT PAPER NUMBER

3626

DATE MAILED: 11/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/157,998

Applicant(s)

LESSER, RONALD

Examiner

Carolyn M. Bleck

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 49-74 and 76-90 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 49-74 and 76-90 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Notice to Applicant***

1. This communication is in response to the amendment filed on 21 August 2006.

Claims 49-74 and 76-90 are pending.

### ***Claim Objections***

2. Claim 51, lines 11-12, "for calculating a description of medical service being" appears to be grammatically incorrect. Appropriate correction is requested.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 49, 51, 57-59 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(A) Claim 49, line 7, "wherein said prompts include," is unclear. It would appear that this limitation should be "said prompting means" rather than "said prompts." It is unclear how prompts can include a guiding means and a soliciting means. Appropriate clarification is requested.

(B) Claims 51, 55, and 57 recite "soliciting underlying information for calculating a description of medical service, said underlying information being independent of the

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description of said medical service for purposes of the eventual billing for the service.”

It is unclear what types of information are considered to be “independent” of the description of said medical service.

(C) Claim 58, lines 7 and 9, “said details” lacks proper antecedent basis. For purposes of applying prior art, “said details” is being interpreted as information.

(D) Claim 59 recites “said information constituting more than just the final billing code for the medical services.” It is unclear to one of ordinary skill in the art what exactly information is that is more than just the final billing code. How much information is more than just the final billing code?

The dependent claims of claim 59 incorporate the deficiencies of claims 59.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 49-56, 58-61, 63-67, 68-69, 71-73, 74, 76-78, 80-82, 84-86, 88, and 90 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans (5,924,074) in view of Dorne (5,325,293).

(A) As per claims 49-50, Evans discloses an apparatus for creating and maintaining patient data electronically and for generating codes (Fig. 20, Abstract) comprising:

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(a) a point of care system to capture patient data at a point of care, wherein the point of care system is a pen-based computer, a laptop, or a desktop computer (Fig. 24, col. 13 lines 12-30, col. 16 lines 2-20), wherein the point of care system comprises;

(i) a patient data capture means communicating with a practice guidelines means to assist the practitioner in selecting an appropriate course of action, including diagnoses and procedures, for a patient in real-time (Fig. 9, Fig. 24, col. 2 lines 22-44, col. 7 line 40 to col. 8 line 17, col. 11 lines 36-64, col. 16 lines 2-20) (reads on “a prompting means to repeatedly generate real-time prompts for various information including medical services being provided”);

(ii) a patient data repository in communication with the point of care system to store and organize the patient data (Fig. 24, col. 4 line 64 to col. 5 line 27, col. 16 lines 2-20);

(iii) wherein said patient data capture means includes:

(1) a practice guidelines means for assisting the practitioner in selecting the appropriate course of action (Fig. 9, Fig. 24, col. 2 lines 22-44, col. 7 line 40 to col. 8 line 17, col. 11 lines 9-30, col. 11 lines 36-64, col. 16 lines 2-20) (reads on “a guiding means”);

(2) a medication manager means for providing a warning of a contraindication and alerting the physician to the contraindication, wherein in view of the warning, the physician can investigate the effects of the medication by clicking on the results button (Fig. 21-22, col. 11 line 65 to col. 12 line 35) (reads on “a reminding means”); and

(3) a graphical user interface for a diagnosis module and procedure module, wherein the physician can enter multiple diagnoses and procedures based on a description of the diagnoses and procedures, wherein the diagnoses and procedures correspond with codes, wherein the physician also obtains insurance information from a patient, wherein the codes include ICD9 diagnosis codes and CPT procedure codes (Fig. 13-14, 20, col. 5 lines 35-40, col. 9 lines 1-13, col. 11 lines 36-64) (reads on "a soliciting means") (It is noted that ICD9 and CPT codes are used for the purpose of billing an insurance company for the medical services provided).

Evans fails to expressly disclose an electronic means including a processing means for calculating intermediate values based on said recorded information and a processing means for using said intermediate values to generate said billing code.

Dorne discloses an apparatus for correlating billing codes with medical procedures comprising: an electronic means including a processing means for calculating intermediate values based on said recorded information (Fig. 1, col. 3 lines 18-38, col. 20-46) and a processing means for using said intermediate values to generate said billing code (Fig. 1, col. 3 lines 18-38, col. 20-46).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the features of Dorne within the apparatus of Evans with the motivation of providing an apparatus for rapidly and simply correlating CPT codes with medical procedures performed during patient examination which does not

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require a thorough understanding of the nomenclature used by the CPT coding system (Dorne; col. 3 lines 10-15).

(B) As per claims 51, Evans discloses a physician selecting an appropriate body system, wherein the appropriate body system is used for determining a description of a medical service (reads on "soliciting underlying information for calculating a description of medical service, said underlying information being independent of the description of said medical service for purposes of the eventual billing for the service") (Fig. 20, col. 11 line 36-64).

Evans and Dorne do not explicitly disclose repeating said prompting, obtaining, and recording step. Official Notice is taken that it would have been obvious to a person of ordinary skill in the art to repeat these steps for obtaining as much accurate data as possible from a patient, thereby making it easier to complete the information gathering.

The remaining features of claim 51 repeat the same limitations of claim 49, and are therefore rejected for the same reasons as claim 49, and incorporated herein.

(C) Claims 52-53 repeat the limitations of claims 49-50, and is therefore rejected for the same reasons as those claims, and incorporated herein.

(D) As per claim 54, Dorne discloses the step of calculating a billing code calculates an appropriate code from the United States Health Care Financing (col. 1, lines 15-30).

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(E) Claims 55-56 repeat the limitations of claims 49-51, and is therefore rejected for the same reasons as those claims, and incorporated herein.

(F) Claim 58 repeats the limitations of claims 49, 51, and 54, and is therefore rejected for the same reasons as those claims, and incorporated herein.

(G) As per claim 59, Evans discloses an electronic apparatus for use in connection with an encounter between a medical practitioner and a patient comprising:

(a) electronic means for prompting the medical practitioner regarding data to be obtained from the patient regarding patient care and corresponding HCFA billing codes, said data including the individual data elements needed to calculate and derive the final billing code based on billing requirements imposed by HCFA, said data constituting more than just the final billing code for the medical services (col. 11 lines 36-64);

(b) a data storage and access means for storing said data from the patient and providing access to (Fig. 1):

(i) a menu section comprising at least one of history, physical examination, and medical decision making questions, said menu section related to said means for prompting the medical practitioner (Fig. 5);

(ii) payer mandated requirement codes (Fig. 20);

(iii) scores based in part on results from responses to said menu section (Fig. 20 – CPT codes);



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(iv) an algorithm for linking and processing said requirement codes with said scores (Fig. 20, col. 11 lines 36-64 - modules);

(v) a resultant code based in part on said linked and processed requirement codes and scores (Fig. 20 – ICD-9 codes).

Evans does not explicitly refer to HCFA.

Dorne discloses the step of calculating a billing code calculates an appropriate code from the United States Health Care Financing (col. 1, lines 15-30).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the features of Dorne within the apparatus of Evans with the motivation of providing an apparatus for rapidly and simply correlating CPT codes with medical procedures performed during patient examination which does not require a thorough understanding of the nomenclature used by the CPT coding system (Dorne; col. 3 lines 10-15).

(H) Claim 60 repeats the limitations of claim 54, and is therefore rejected for the same reasons as claim 54, and incorporated herein.

(I) As per claim 61, Evans discloses collecting data over the Internet (Fig. 24). It is inherent that collecting data over the Internet includes a timer in order to time out the data session when a user has not entered data over a certain period of time.

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(J) As per claim 63, Evans discloses noting dictation and for later appending dictated notices with said responses (Fig. 13-14).

(K) As per claims 64-65, Evans discloses a history score and a physical examination score (Fig. 7) and a final score showing scores that are outside of a range (Fig. 7).

(L) As per claims 66-67, Evans discloses dictated and free form text information based on said responses of the physical examination (Fig. 13-14, col. 8 line 29 to col. 9 line 13).

(M) Claims 68 and 74 repeat the limitations of claims 49 and 59, and is therefore rejected for the same reasons as those claims, and incorporated herein.

(N) As per claim 69, Evans discloses CPT and ICD-9 codes for billing (Fig. 20).

(O) Claim 71-73 repeat the limitations of claims 50 and 54, and are therefore rejected for the same reasons given for those claims, and incorporated herein.

(P) Claims 77-78 repeat the limitations of claim 50, and is therefore rejected for the same reasons as claim 50, and incorporated herein.

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(Q) As per claim 76, Evans discloses calculating scores, said scores based in part on said requirements and related to billing codes and said gathered information (Fig. 20, col. 11 lines 36-64), electronically linking said gathered information, said requirements, and said scores for processing (Fig. 20, col. 11 lines 36-64), processing said linked information with an algorithm to compute a final score (Fig. 20, col. 11 lines 36-64), and providing a copy of said final score and other gathered information (Fig. 20, col. 11 lines 36-64).

The remaining features of claim 76 repeat the limitations of claims 49 and 59, and are therefore rejected for the same reasons given for those claims, and incorporated herein.

(R) Claims 84-87 repeat the limitations of claim 49, and is therefore rejected for the same reasons as claim 49, and incorporated herein.

7. Claims 57, 77, 79, 87, and 90 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans (5,924,074) in view of Dorne (5,325,293) and Peters et al. (5,893,098).

(A) As per claims 57, 77, and 87, Evans discloses an apparatus for creating and maintaining patient data electronically and for generating codes (Fig. 20, Abstract) comprising:

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(a) a point of care system to capture patient data at a point of care, wherein the point of care system is a pen-based computer, a laptop, or a desktop computer (Fig. 24, col. 13 lines 12-30, col. 16 lines 2-20) (reads on “an electronic means”), wherein the point of care system comprises;

(i) a patient data capture means communicating with a practice guidelines means to assist the practitioner in selecting an appropriate course of action, including diagnoses and procedures, for a patient in real-time, wherein the physician can enter results of a current examination of a patient, including family history, current medications and complaints based on a graphical user interface (Fig. 5 – see the problem list, history, etc. – a form of “series of inquires”) (Fig. 9, Fig. 24, col. 2 lines 22-44, col. 5 lines 1-28, col. 6 lines 10-36, col. 7 line 40 to col. 8 line 17, col. 11 lines 36-64, col. 16 lines 2-20) (reads on “a prompting means”);

(ii) said patient data capture means including:

(1) a practice guidelines means for assisting the practitioner in selecting the appropriate course of action (Fig. 9, Fig. 24, col. 2 lines 22-44, col. 7 line 40 to col. 8 line 17; col. 11 lines 9-30, col. 11 lines 36-64, col. 16 lines 2-20) (reads on “a guiding means”);

(2) a medication manager means for providing a warning of a contraindication and alerting the physician to the contraindication, wherein in view of the warning, the physician can investigate the effects of the medication by clicking on the results button (Fig. 21-22, col. 11 line 65 to col. 12 line 35) (reads on “a reminding means”); and

(3) a graphical user interface for a diagnosis module and procedure module, wherein the physician can enter multiple diagnoses and procedures based on a description of the diagnoses and procedures, wherein the diagnoses and procedures correspond with codes, wherein the physician also obtains insurance information from a patient, wherein the codes include ICD9 diagnosis codes and CPT procedure codes (Fig. 13-14, 20, col. 5 lines 35-40, col. 9 lines 1-13, col. 11 lines 36-64) (reads on "a soliciting means") (It is noted that ICD9 and CPT codes are used for the purpose of billing an insurance company for the medical services provided).

(ii) a patient data repository in communication with the point of care system to store and organize the patient data (Fig. 24, col. 4 line 64 to col. 5 line 27, col. 16 lines 2-20);

Evans does not expressly disclose a calculating means for calculating the government billing code based on information recorded from the medical interview, although Evans does suggest using ICD9 and CPT codes.

Dorne discloses an apparatus for correlating billing codes with medical procedures comprising: an electronic means including a processing means for calculating intermediate values based on said recorded information (Fig. 1, col. 3 lines 18-38, col. 20-46) and a processing means for using said intermediate values to generate said billing code (Fig. 1, col. 3 lines 18-38, col. 20-46), wherein calculating a

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billing code includes calculating an appropriate code from the United States Health Care Financing (HCFA) (col. 1, lines 15-30).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the features of Dorne within the apparatus of Evans with the motivation of providing an apparatus for rapidly and simply correlating CPT codes with medical procedures performed during patient examination which does not require a thorough understanding of the nomenclature used by the CPT coding system (Dorne; col. 3 lines 10-15).

Evans and Dorne do not expressly disclose calculating means for calculating further prompting for inquiries to make of the patient using at least some of the preceding responses.

Peters discloses asking questions in a survey including branched-to questions linked to another question or questions such that the branched-to question or questions will only be required to be answered by a respondent user if the respondent user gives a predetermined answer to the question or series of questions to which the branched-to question is linked (col. 5 line 54 to col. 6 line 27).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the features of Peters within the apparatus taught collectively by Evans and Dorne with the motivation of preventing the user from having to wade through a series of displayed questions to find the ones that are relevant to the user, thus saving time (Peters; col. 6 lines 24-27).

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(B) As per claims 79 and 90, the Examiner discloses that scannable forms are well known in the art of surveying. At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the modification within the apparatus taught collectively by Evans, Dorne, and Peters with the motivation of efficiently obtaining user results.

8. Claim 62 is rejected under 35 U.S.C. 103(a) as being unpatentable over Evans (5,924,074) and Dorne (5,325,293), and further in view of Official Notice.

(A) As per claim 62, Evans and Dorne do not expressly disclose software for enabling a user of said apparatus to self-generate questions in any particular order. It is respectfully submitted that it is well known in the art of generating questionnaires to allow a user to generate questions in a particular order depending on the user's preference. The motivation for including this modification within the system taught collectively Evans and Dorne being to provide a user friendly means to allow a user to customize a questionnaire.

9. Claims 70 and 81-83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans (5,924,074) and Dorne (5,325,293) as applied to claims 49, 51, and 68, and further in view of Letzt et. al (5,612,869).

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(A) As per claim 70, Evans and Dorne does not explicitly disclose a timer for tracking total time and patient counseling time during said patient encounter, and an algorithm for computing when said time exceeds fifty percent of said total time. Letzt discloses an electronic health care compliance assistance comprising a timer for tracking total time and patient counseling time including a Health Care Financial Administration billing code (col. 26, lines 12-28). At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the features of Letzt within the system of Evans and Dorne with the motivation of decreasing the costs to certain therapies, thereby improving compensation from the patient's insurance.

(B) As per claims 81-82, Evans and Dorne do not explicitly disclose a billing code based in part on comparing a total patient encounter time and a total patient counseling time. Letzt on the other hand, discloses an electronic health care compliance assistance comprising a timer for tracking total time and patient counseling time including a health care financial administration billing code (col. 26, lines 12-20). Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to modify Evans and Dorne by including a billing code based in part on comparing a total patient encounter time and a total patient counseling time as evidenced by Letzt. The motivation being to decrease the costs to certain therapies given to a patient, thereby improving compensation from the patient's insurance.



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(C) As per claim 83, Evans and Dorne do not explicitly disclose a billing code based in part on comparing a total patient encounter time and a total patient counseling time.

Letzt on the other hand, discloses an electronic health care compliance assistance comprising a timer for tracking total time and patient counseling time including a health care financial administration billing code (col. 26, lines 12-20). Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to modify Evans and Dorne by including a billing code based in part on comparing a total patient encounter time and a total patient counseling time as evidenced by Letzt. The motivation being to decrease the costs to certain therapies given to a patient, thereby improving compensation from the patient's insurance.

10. Claim 80 is rejected under 35 U.S.C. 103(a) as being unpatentable over Evans (5,924,074) and Dorne (5,325,293) as applied to claim 68, and further in view of Kraftson et al. (6,151,581).

(A) As per claim 80, Evans and Dorne do not expressly disclose a scannable form for prompting inquiries. Kraftson discloses a scannable form for prompting inquiries (col. 5, lines 1-6). At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the features of Kraftson within the system of Evans and Dorne with the motivation of providing an efficient means to collect survey data.

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11. Claims 88-89 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans (5,924,074) and Dorne (5,325,293) as applied to claims 49 and 51, and further in view of Peters et al. (5,893,098).

(A) As per claims 88-89, Evans and Dorne do not expressly disclose prompting for inquiries to make of the patient using at least some of the preceding responses.

Peters discloses asking questions in a survey including branched-to questions linked to another question or questions such that the branched-to question or questions will only be required to be answered by a respondent user if the respondent user gives a predetermined answer to the question or series of questions to which the branched-to question is linked (col. 5 line 54 to col. 6 line 27).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the features of Peters within the apparatus taught collectively by Evans and Dorne with the motivation of preventing the user from having to wade through a series of displayed questions to find the ones that are relevant to the user, thus saving time (Peters; col. 6 lines 24-27).

### ***Response to Arguments***

12. Applicant's arguments with respect to claims 49-74 and 76-90 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

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13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn Bleck whose telephone number is (571) 272-6767. The Examiner can normally be reached on Monday-Thursday, 8:00am – 5:30pm, and from 8:30am – 5:00pm on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached at (571) 272-6776.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**15. Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**Or faxed to:**

(571) 273-8300	[Official communications]
(571) 273-8300	[After Final communications labeled "Box AF"]
(571) 273-6767	[Informal/ Draft communications, labeled "PROPOSED" or "DRAFT"]

Hand-delivered responses should be brought to the Knox Building, Alexandria, VA.

*CB*

CB

November 3, 2006

*Joseph Thomas*  
JOSEPH THOMAS  
SUPERVISORY PATENT EXAMINER